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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/797,490

03/10/2004

Virgil E. Stanley III

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EXAMINER

AUSTIN, AARON

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/797,490	<b>Applicant(s)</b> STANLEY, VIRGIL E.	
	<b>Examiner</b> AARON S. AUSTIN	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5-10,12,13 and 15-29 is/are pending in the application.
- 4a) Of the above claim(s) 10,12,13,15-17 and 27-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-9 and 18-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 October 2004 and 10 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

In view of the appeal brief filed on 2/14/08, PROSECUTION IS HEREBY REOPENED.

New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Terrel Morris/  
Supervisory Patent Examiner  
Group Art Unit 1794

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7-9, 18-19, 22-23, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liao (US 5,487,502) in view of Rodgers (US 7,040,548).

Liao teaches a decorative device for emitting odor in the form of an ornamental plant (column 2, line 5), an example of which is a tree, comprising a hollow trunk 23, a series of branches 24/25 (column 2, lines 38-40), and a fragrance source 2/21 (column 2, lines 20-21).

Liao teaches the emission of an air-fragrance mixture through the hollow trunk 23 and associated branches 24/25 due to release of pressure from the pressurized fragrance source 2/21. Liao does not teach air movement due to movement of a physical structure in the form of a fan.

Rodgers teaches a scent dispenser for continuous dispersion of a scent having a housing with a scent container having a scent permeating material disposed therein. A fan moves air across the scent permeating material to produce an air-fragrance mixture. Therefore, as Rodgers clearly teaches a fan provides the advantage of continuous movement of an air-fragrance mixture whose scent may be easily changed without the cost of replacing structural parts of the device, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use the scent dispenser of Rodgers in place of the compressed fragrance source of Liao which requires complete replacement or removal for refilling of the canister.

Regarding claim 7, the fragrance source of Rodgers includes a container housing the scent permeating material.

Regarding claim 8, the container housing the scent permeating material of Rodgers includes openings and the scent permeating material may be a fragrance block.

Regarding claim 9, Rodgers teaches positioning the fragrance source downstream from the air generated by the fan (column 2, lines 42-44). Therefore, it would have been obvious to one of ordinary skill in the art to place the fragrance source within the trunk of Liao as the air flow required to make the air-fragrance mixture proceeds through the trunk. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to position the fragrance source within the trunk, since it has been held that the use of a one piece construction instead of the structure disclosed in the prior art would be merely a matter of obvious engineering choice. *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA (1965)).

Regarding claim 19, Rodgers teaches positioning the fragrance source downstream from and adjacent to the air generated by the fan (column 2, lines 42-44).

Regarding claim 22, Liao teaches the scent as simulating that of the true plant being artificially replicated (column 3, lines 22-25). Further, Rodgers teaches cedar, a tree suitable for use as a Christmas tree, is a desirable scent (column 1, line 19).

Regarding claim 23, the fragrance source of Liao is adjacent the trunk of the ornamental plant (Fig. 1).

Regarding claim 24, the air-fragrance mixture of Liao may be directed through the trunk and out the branches.

Regarding claims 25 and 26, Liao teaches the fragrance source as being within a container 1. Further, Rodgers teaches the fan and fragrance source are contained in a housing or container. Thus replacement of the compressed fragrance source of Liao with the device or Rodgers provides for the fan and fragrance source contained in a housing or container.

Claims 5, 6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liao (US 5,487,502) in view of Rodgers (US 7,040,548), and further in view of Zins (U.S. Patent no. 5,517,390).

Liao in view of Rodgers teaches emission of an air-fragrance mixture as described above.

Liao in view of Rodgers does not teach the fan being disposed within the trunk.

Zins teaches at least one fan, possibly more, disposed within the trunk of an artificial tree used to efficiently cool the interior of the main trunk by circulating air therein (column 4, lines 49-52, 61-63). Therefore, as it is clearly taught by Zins that placement of a fan within the trunk of an artificial tree provides the benefit of efficient delivery of air and cooling within the trunk, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to position the blower/fan in the device taught by Liao in view of Rodgers in the trunk to provide the necessary flow of air to drive the air-fragrance mixture to the exterior of the tree.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liao (US 5,487,502) in view of Rodgers (US 7,040,548), and further in view of Masuda (JP 2001327820A).

Liao in view of Rodgers teaches emission of an air-fragrance mixture as described above.

Liao in view of Rodgers does not teach a plurality of trunk openings disposed within the trunk.

Masuda teaches formation of artificial trees as air cleaners with air passages leading to a plurality of openings formed in the trunks having the benefit of a separation in height and

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direction of the ejection of the air flow. Therefore, as Masuda clearly teaches formation of air passages leading to a plurality of trunk openings provides the advantage of multiple release points beneficially separating the air flow in height and direction, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to form multiple release points for the air-fragrance mixture of Liao to move in more than one direction.

Claims 1, 7-9, 18-19, 21-23, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda (JP 2001327820A) in view of Rodgers (US 7,040,548).

Masuda teaches an air cleaner in the form of a flowerpot-shaped case comprising a trunk 14 having an air passageway therein, a series of branches 16 extending from the trunk, and a fan 24 for moving air through a portion of the trunk (Fig. 1).

Masuda does not teach a fragrance source wherein the fan moves air across the fragrance source to form an air-fragrance mixture.

Rodgers teaches a scent dispenser for dispersion of a scent having a housing with a scent container having a scent permeating material disposed therein. A fan moves air across the scent permeating material to produce an air-fragrance mixture. Therefore, as Rodgers clearly teaches location of a housing with a scent container having a scent permeating material disposed therein provides the advantage of a desirable air-fragrance mixture when subjected to air movement generated by a fan, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to replace the fan of Masuda with the device of Rodgers or place a housing

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with a scent permeating material downstream from the fan of Masuda to produce an desirable scent in the form of an air-fragrance mixture when the fan is activated.

Regarding claim 7, the fragrance source of Rodgers includes a container housing the scent permeating material.

Regarding claim 8, the container housing the scent permeating material of Rodgers includes openings and the scent permeating material may be a fragrance block.

Regarding claim 9, Rodgers teaches positioning the fragrance source downstream from the air generated by the fan (column 2, lines 42-44). Therefore, it would have been obvious to one of ordinary skill in the art to place the fragrance source within the tree of Masuda as the air flow required to make the air-fragrance mixture proceeds through the tree. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to position the fragrance source within the trunk, since it has been held that the use of a one piece construction instead of the structure disclosed in the prior art would be merely a matter of obvious engineering choice. *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA (1965)).

Regarding claim 19, Rodgers teaches positioning the fragrance source downstream from the air generated by the fan (column 2, lines 42-44). Therefore, it would have been obvious to one of ordinary skill in the art to place the fragrance source adjacent the fan of Masuda as the air flow required to make the air-fragrance mixture as taught by Rodgers proceeds adjacent the fan.

Regarding claim 21, the trunk of Masuda includes a plurality of trunk openings 18 through which the air-fragrance mixture can move through at least a portion of the hollow trunk.



Regarding claim 22, Rodgers teaches cedar, a tree suitable for use as a Christmas tree, is a desirable scent (column 1, line 19).

Regarding claim 23, the fragrance source of Rodgers is adjacent the fan and trunk of the tree.

Regarding claims 25 and 26, Rodgers teaches the fan and fragrance source are contained in a housing or container. Further, Rodgers teaches positioning the fragrance source downstream from the air generated by the fan (column 2, lines 42-44). Therefore, it would have been obvious to one of ordinary skill in the art to place the fragrance source adjacent the fan of Masuda as the air flow required to make the air-fragrance mixture as taught by Rodgers proceeds adjacent the fan. If the fragrance source is adjacent to the fan, it will be contained in the flowerpot shaped container of Masuda that contains the fan and supports the tree.

Claims 5, 6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda (JP 2001327820A) in view of Rodgers (US 7,040,548), and further in view of Zins (U.S. Patent no. 5,517,390).

Masuda in view of Rodgers teaches emission of an air-fragrance mixture as described above.

Masuda in view of Rodgers does not teach the fan being disposed within the trunk.

Zins teaches at least one fan, possibly more, disposed within the trunk of an artificial tree used to efficiently cool the interior of the main trunk by circulating air therein (column 4, lines 49-52, 61-63). Therefore, as it is clearly taught by Zins that placement of a fan within the trunk of an artificial tree provides the benefit of efficient delivery of air and cooling within the trunk, it

would have been obvious to one of ordinary skill in the art at the time of the claimed invention to position the blower/fan in the device taught by Masuda in view of Rodgers in the trunk to provide the necessary flow of air to drive the air-fragrance mixture to the exterior of the tree.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda (JP 2001327820A) in view of Rodgers (US 7,040,548), and further in view of Kuwabara (JP 07024047), and Hashino (JP 405306833 A).

Masuda teaches an air cleaner in the form of a flowerpot-shaped case and artificial tree as described above.

Masuda does not teach passage of the air-fragrance mixture out the branches.

Kuwabara teaches an air cleaner comprising a trunk having an air passageway therein, a series of branches extending from the trunk, and a fan to move air through the trunk and out the branches. Therefore, as Kuwabara clearly teach formation of air passages leading to a plurality of trunk openings provides the advantage of multiple release points separating the air flow in height and direction, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to form multiple release points for the air-fragrance mixture of Masuda in view of Rodgers to spread the mixture in more than one direction.

Likewise, Hashino teaches an air conditioning device formed in the shape of a tree wherein heated or cooled air is passed through the trunk and out of the trunk and branches (Fig. 1). Therefore, as Hashino clearly teaches passage of air through the trunk and out a plurality of openings in the branches of an artificial tree provides the advantage of balancing the exit of air around the tree, it would have been obvious to one of ordinary skill in the art at the time of the

claimed invention to pass the air-fragrance mixture of Masuda in view of Rodgers through the trunk and out the branches to balance the delivery of the mixture to the exterior of the tree.

Claims 1, 7, 9, 18-19, and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bigman (U.S. Patent No. 6,696,116) in view of Brown (U.S. Patent No. 6,258,871), and further in view of Masuda (JP 2001327820A), Kuwabara (JP 07024047), and Hashino (JP 405306833 A).

Bigman teaches a device and method for flowing pellets that may, for example, simulate snowfall on a tree (abstract and column 2, lines 1-4). The device includes a hollow tube 16 associated with a support 14a for the tree, branches extending from the trunk (Fig. 4, column 1, line 51), and a blower/fan configured to generate upward movement of the artificial snow pellets 12 through at least a portion of the hollow tube 16 as an air-pellet mixture to an outlet (column 2, lines 27-65). The pellets 12 are in a container associated with the tree prior to being emitting through hollow tube 16 (Fig. 4).

Bigman does not teach the artificial snow pellets 12 as having a fragrance.

Brown teaches addition of scent to artificial snow is desirable as artificial trees lack the scent normally associated with natural Christmas tree displays (column 1, lines 21-50). Therefore, as it is clearly taught by Brown that scented artificial snow may provide the benefit of desirable scents associated with a tree or a holiday such as Christmas, it would have been obvious to one of ordinary skill in the art at the time of the present invention to either impart a scent to the pellets taught by Bigman or use the scented artificial snow of Brown as the pellets of Bigman.

Bigman does not teach the hollow tube 16 as being a "trunk" such that it provides structural support.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to integrate the hollow tube 16 with the support 14a to form a single supporting trunk having an air passageway formed therein, since it has been held that the use of a one piece construction instead of the structure disclosed in the prior art would be merely a matter of obvious engineering choice. *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA (1965)).

Further, Masuda and Kuwabara both teach formation of artificial trees as air cleaners with air passages formed in the trunks having the benefit of a pleasing appearance. Therefore, as both Masuda and Kuwabara clearly teach formation of air passages in the trunks of artificial trees provides the advantage of hidden piping resulting in a more pleasing appearance of the artificial plant, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to incorporate the hollow tube 16 of Bigman in the trunk of the tree.

Regarding claim 7, the pellets 12 are in a container associated with the tree prior to being emitting through hollow tube 16 (Fig. 4).

Regarding claim 9, the fragrance source, namely the scented artificial snow as taught by Brown, is disposed within the tree as it passes through the hollow tube 16 incorporated into the tree as taught by Masuda and Kuwabara.

Regarding claim 19, the fan and the artificial snow pellets are disposed adjacent each other (Fig. 4).

Regarding claims 21 and 24, Masuda and Kuwabara both teach formation of artificial trees as air cleaners with air passages leading to a plurality of openings formed in the trunks and branches having the benefit of a separation in height and direction of the ejection of the air flow. Therefore, as both Masuda and Kuwabara clearly teach formation of air passages leading to a plurality of trunk openings provides the advantage of multiple release points separating the air flow in height and direction, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to form multiple release points for the air-pellet mixture of Bigman to spread the simulated snow in more than one direction.

Likewise, Hashino teaches an air conditioning device formed in the shape of a tree wherein heated or cooled air is passed through the trunk and out of the trunk and branches (Fig. 1). Therefore, as Hashino clearly teaches passage of air through the trunk and out a plurality of openings in the branches of an artificial tree provides the advantage of balancing the exit of air around the tree, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to pass the air-pellet mixture of Bigman through the trunk and out the branches to balance the delivery of the artificial snow to the exterior of the tree.

Regarding claim 22, Brown teaches a suitably desirable scent is that of a fresh-cut evergreen (column 1, line 32).

Regarding claim 23, the fragrance source, namely the scented artificial snow, is disposed adjacent the artificial tree (Fig. 4).

Regarding claims 25 and 26, the fan and fragrant artificial snow are contained in a container 18 (Fig. 4).

Regarding claim 26, the container 18 at least partially supports the tree.

Claims 5, 6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bigman (U.S. Patent No. 6,696,116) in view of Brown (U.S. Patent No. 6,258,871), Masuda (JP 2001327820A), Kuwabara (JP 07024047), and Hashino (JP 405306833 A) as set forth above, and further in view of Zins (U.S. Patent no. 5,517,390).

Bigman in view of Brown, Masuda, and Kuwabara teaches a device and method for flowing scented artificial snow pellets as described above.

Bigman in view of Brown, Masuda, and Kuwabara does not teach the fan being disposed within the trunk.

Zins teaches at least one fan, possibly more, disposed within the trunk of an artificial tree used to efficiently cool the interior of the main trunk by circulating air therein (column 4, lines 49-52, 61-63). Therefore, as it is clearly taught by Zins that placement of a fan within the trunk of an artificial tree provides the benefit of efficient delivery of air and cooling within the trunk, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to position the blower/fan in the device taught by Bigman in view of Brown, Masuda, and Kuwabara in the trunk to provide the necessary flow of air to drive the artificial snow to the exterior of the tree.

### ***Response to Arguments***

Due to further search and consideration, the finality of the previous Office Action is hereby withdrawn.

Applicant's arguments with respect to claims 1, 5-9, and 18-26 filed 2/14/08 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Spector (US 4,346,059) teaches an aroma-generating lamp structure.

Chu (US 4,962,922) teaches an apparatus for circulating snow around a tree.

Oshinsky (US 5,069,876) teaches a scent producing display.

Martter et al. (US 6,289,176) was cited in the present specification as an exemplary scent producing device but has not been made of record.

Lin (US 6,536,910) teaches a vapor generating lamp shade.

Johnson et al. (US 6,811,836 and 7,163,725) teach a tree-like display including air emission through the trunk in the form of bubbles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON S. AUSTIN whose telephone number is (571)272-8935.

The examiner can normally be reached on Monday-Friday: 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aaron Austin/

/Terrel Morris/  
Supervisory Patent Examiner  
Group Art Unit 1794